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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

HAROLD L. ICKES, AS SECRETARY OF THE INTERIOR, *Petitioner*,

vs.

VIRGINIA-COLORADO DEVELOPMENT CORPORATION.

BRIEF FOR RESPONDENT.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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VIRGINIA-COLORADO DEVELOPMENT CORPORATION.

BRIEF FOR RESPONDENT

PRELIMINARY STATEMENT

The Virginia-Colorado Development Corporation, respondent here, filed its bill in equity in the Supreme Court of the District of Columbia against the Secretary of the Interior, praying for a mandatory injunction requiring the Secretary to vacate and set aside a decision rendered by him to the effect that certain oil shale placer mining claims, belonging to respondent, were null and void. The Secretary moved to dismiss the bill. This motion was overruled by the Supreme Court of the District, and the Secretary, declining to plead further, the Court entered a decree commanding the Secretary of the Interior to vacate and set

*Italics ours wherever used.

aside his decision. Upon appeal to the Court of Appeals of the District, that judgment was affirmed. The case is here upon a petition for certiorari granted by this Court. Respondent is not satisfied with the statement found in the brief of petitioner and therefore deems it necessary to submit its own statement.

STATEMENT OF FACTS

The facts alleged in the bill, all of which are admitted here, are substantially as follows:

1. During the month of June, 1917, respondent located and duly perfected the location of six oil shale placer mining claims in the State of Colorado, under the Act of Congress approved May 10, 1872 (Section 2324 Revised Statutes, Section 28, Title 30, USCA). (R. 1.)

2. Thereafter respondent performed labor and made improvements on each of said claims of the value of at least $100 during each succeeding year, down to and including the year ending July 1, 1930. For the year ending July 1, 1931, respondent did not perform such labor or make such improvements on any of said claims. However, respondent had not abandoned said claims, nor had it any intention of abandoning the same. On the contrary it intended to resume work thereon, and on September 4, 1931, respondent had made all arrangements for the resumption of such annual work and would have resumed the same had it not been for the action of the Secretary taken on that date, as hereinafter shown. (R. 1, 2.)

3. On September 4, 1931, adverse proceedings were initiated by the Department of the Interior, through the General Land Office, against each of said claims. Said adverse proceedings contained the charge that plaintiff had not performed labor or made improvements on any of said claims of the value of $100 for the year ending July 1, 1931, and had not resumed such work prior to the date of filing the adverse proceedings. Said adverse proceedings also

contained the statement that the United States resumed possession of said land. No other charge of any kind was contained therein, and said adverse proceedings were based solely upon the ground that respondent had failed to perform the annual assessment work on said claims for the year ending July 1, 1931, and had not resumed said work before the institution of such adverse proceedings. It was alleged in the adverse proceedings that, by reason of this fact, respondent had forfeited its title and right of possession to said claims, and that therefore such claims were subject to cancellation. (R. 2.)

4. Respondent filed its answer to said adverse proceedings, admitting that it had failed to perform the assessment work for the year ending July 1, 1931, but claimed a right to resume performance of the annual assessment work. Thereafter the Commissioner of the General Land Office held that plaintiff's claims were null and void, and upon appeal to the Secretary, that official affirmed the decision of the Commissioner. (R. 3.)

5. None of said claims have ever been relocated by any person, nor has any application ever been made by any person to lease said claims from the United States. (R. 2.)

6. The action of the Secretary was arbitrary and unlawful and beyond the jurisdiction of the Secretary to make, and said order has cast a cloud upon respondent's title to said claims and has created a doubt as to the right of respondent to resume the annual work thereon, which it is ready, willing and anxious to do, and will resume the same if the decision of the Secretary be set aside. (R. 5, 6.)

STATEMENT OF CASE

The placer mining claims, which are in controversy here, were located by respondent in 1917 under the provisions of the Act of Congress approved May 10, 1872 (Sections 2324 Revised Statutes, Section 28, Title 30, USCA). At that time the Act of May 10, 1872, was in full force and effect.

After these claims had been legally and validly located, Congress passed another act known as the Mineral Leasing Act of February 25, 1920 (41 Stat. 437, Sections 181-193, Title 30 USCA). After the passage of the Leasing Act, said minerals therein named (coal, phosphate, sodium, oil, oil shale and gas) could be acquired from the United States only under the terms of that Act, except where valid claims had already been initiated and maintained under the previous mining law. The placer mining law, under which these claims were initiated, required that on each mining claim there be performed not less than $100 worth of labor, or improvements made, during each year. The statute further provides that, upon a failure to perform such labor or make such improvements, the claim shall be open to relocation in the same manner as if no location had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, had not resumed work before such new location.

The Leasing Act of 1920 provided that the mineral lands of the United States, described therein, should be subject to disposition only under that Act, "*except as to valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.*"

It is to be noted that these claims were initiated in 1917, that for thirteen years thereafter respondent performed the annual assessment work of the value of $100 on each claim, and that such claims were admittedly valid in every respect down to the first day of July, 1931. It is also admitted that respondent had no intention of abandoning these claims, and had actually made arrangements to resume the assessment work thereon, and intended to and would have resumed such work had it not been for the action of the Department on September 4, 1931, in filing adverse proceedings challenging the validity of the claims and the right of respondent to resume work thereon. It

is also admitted that had respondent actually resumed said work prior to the filing of the contest, the claims would still have been valid claims, with the unquestioned right in the respondent to apply for and secure a patent from the United States therefor.

QUESTION PRESENTED

The sole question presented is whether the Secretary of the Interior was given, by the Leasing Act, a power which he had not theretofore had, that is, the power to cancel, through adverse proceedings, an otherwise valid mining claim, initiated prior to the Leasing Act, on account of a failure for a few months to do annual assessment work, where the owner had not abandoned the claim but had actually made arrangements for the resumption of the annual work at the time the adverse proceedings were filed, and would have resumed such work had such proceedings not been filed, and where such mining claim had not been relocated by others nor had any application been made to the United States for a lease thereon.

SUMMARY OF ARGUMENT

1. Prior to the passage of the Leasing Act in 1920, the Secretary of the Interior had no power to declare a mining claim forfeited for failure to do assessment work. The Secretary did have the power under proper proceedings to declare a mining claim void for fraud or lack of discovery or other defect, or he could declare the claim cancelled by reason of a subsequent abandonment. *Cameron v. United States*, 252 U. S. 450; *Black v. Elkhorn Mining Company*, 163 U. S. 445; *Farrell v. Lockhart*, 210 U. S. 142; *Brown v. Gurney*, 201 U. S. 184. But he had no power to declare the claim forfeited because of failure to do the annual assessment work. *Wilbur v. Krushnic*, 280 U. S. 306. The only penalty for failure to do the annual assessment work, to which the locator was subject, was a possible reloca-

tion of his claim by some other person prior to the resumption of work by the original locator, in which event the original locator would lose his claim.

2. The Leasing Act provided that deposits of coal, phosphate, sodium, oil, oil shale and gas should thereafter be subject to lease only, not to location. But one important exception was provided in the Act. That exception reads as follows:

> "except as to valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery."

It is thus clear that the Secretary was given no power to cancel a claim for any reason other than those furnishing a ground of cancellation prior to the passage of the Leasing Act. On the contrary, every right which the owner of a valid existing claim had at the time of the passage of the Leasing Act was preserved by such Act.

3. The Leasing Act provides that valid existing claims might be "maintained" under the prior law. The word "maintain" means "to preserve," "to keep in existence," "not to allow to fail." C. J. Vol. 38 p. 334-337. Prior to the passage of the Leasing Act, one of the ways in which a claim might have been maintained was to resume annual assessment work prior to other location. *Wilbur v. Krushnic,* 280 U. S. 306. Therefore it may be maintained in the same way now.

4. Petitioner contends that because the Leasing Act removed the hazard of relocation, the original locator is thus given an advantage which he had not theretofore had, and that, therefore, this Court must read into the Leasing Act some compensating disadvantage, and petitioner thinks that a reasonable compensating disadvantage would be to give the Secretary of the Interior a right to cancel the claim for failure to do assessment work. He thus asks this

Court to read into the statute an entirely new provision which Congress did not see fit to insert. But nothing may be implied in a statute except that which is necessary to clear up some ambiguity. In the amendment to the Alaska Mining Law of March 2, 1907, Congress provided that claims in Alaska were forfeited by failure to do the annual labor, but it made no such provision for the rest of the United States. Petitioner now asks this Court to make the Alaska law apply to the rest of the country. But this Court can not read into a statute a provision which Congress deliberately omitted.

5. The title of respondent to its claims having been clouded by the unlawful action of the Secretary, a mandatory injunction is the proper remedy.

ARGUMENT

I

Prior to Passage of Leasing Act a Failure to Do Assessment Work Did Not Affect Validity of Mining Claim.

Nothing is better settled in mineral law than that the failure of a locator to do annual assessment work in the absence of another location did not affect the vaildity of a mining claim. *Wilbur v. Krushnic* 280 U. S. 306. In that case the court said at page 317 of the opinion:

> "Prior to the passage of the Leasing Act, annual performance of labor was not necessary to preserve the possessory right, with all the incidents of ownership above stated, as against the United States, but only as against subsequent relocators. So far as the government was concerned, failure to do assessment work for any year was without effect.
>
> "While he is required to perform labor of the value of $100 annually, a failure to do so does not *ipso facto* forfeit the claim, but only renders it subject to loss by relocation. And the law is clear that no relocation can be made if work be resumed after default and before such relocation."

II

Prior to Leasing Act the Secretary of the Interior Had No Power to Declare a Mining Claim Forfeited for Failure to Do Assessment Work.

Prior to the passage of the Leasing Act in 1920, the Secretary of the Interior had power, under proper proceedings, to declare a mining claim void for fraud or lack of discovery, or other defect. *Cameron v. United States* 252 U. S. 450. In that case this Court said at page 460 of the opinion:

> "Of course, the land department has no power to strike down any claim arbitrarily, but so long as the legal title remains in the Government it does have power, after proper notice and upon adequate hearing, to determine whether the claim is valid and, if it be found invalid, to declare it null and void."

The abandonment of a claim by the locator cancelled the claim, even though the annual assessment work might have been done. *Black v. Elkhorn Mining Company* 163 U. S. 445; *Farrell v. Lockhart* 210 U. S. 142; *Brown v. Gurney* 201 U. S. 184. It therefore follows under the doctrine announced in *Cameron v. United States*, that the Secretary of the Interior, prior to the passage of the Leasing Act, had power to declare a claim cancelled by reason of its abandonment. But the failure to do annual assessment word did not render the claim invalid, nor did it have any effect of which the Secretary could take notice in the absence of another location prior to the resumption of such assessment work. In the absence of such relocation the claim was still a valid claim. *Wilbur v. Krushnic* 280 U. S. 306. It therefore follows that the Secretary had no power to declare a claim forfeited for failure to do the annual work where there has been no relocation.

III

Leasing Act Gave Secretary No Power to Declare Claims Forfeited for Lack of Assessment Work, on the Contrary That Act Specifically Preserved All Rights as to Valid Existing Claims.

The Leasing Act of 1920 provides that deposits of coal, phosphate, sodium, oil, oil shale and gas should not thereafter be subject to location under the general mining laws, but should be subject only to lease in the manner provided in the Act. But it specifically excepted valid claims in existence at the date of the passage of the Act, and provided that such claims might be maintained and perfected under the old law. The pertinent portion of the statute is as follows:

> "SEC. 37. That the deposits of coal, phosphate, sodium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits described in the joint resolution entitled 'Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal mining operations on certain lands in Wyoming', approved August 1, 1912 (Thirty-seventh Statutes at Large, page 1346), shall be subject to disposition only in the form and manner provided in this Act, *except as to valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.*" (Italics ours.)

It thus appears that Congress specifically intended to reserve to the owners of existing locations every right which they had prior to the passage of the Leasing Act. One of those rights was the right of the owner to resume his annual assessment work after default in such work, at any date prior to a relocation by some other person and prior to his own abandonment of such claim. As this Court said in *Wilbur v. Krushnic*, 280 U. S. at page 317 of this opinion:

> "Whenever $500 worth of labor in the aggregate had been performed, other requirements aside, the owner became entitled to a patent, even though in some years annual assessment labor had been omitted."

As we have seen, the Leasing Act excepted from its operations valid existing claims thereafter maintained in compliance with the law under which the claims were initiated. The word "maintain" means "to preserve," "to keep in existence," "not to allow to fail." C. J. Vol. 38 p. 334-337.

Prior to the passage of the Leasing Act one of the ways in which a claim might be maintained was to resume annual assessment work prior to location by some other person. Again quoting from *Wilbur v. Krushnic*, 280 U. S. 306, this Court said at page 318 of the opinion:

> "Resumption of work by the owner, unlike a relocation by him, is an act not in derogation but in affirmance of the original location; and thereby the claim is 'maintained' no less than it is by performance of the annual assessment labor. Such resumption does not *restore a lost* estate—see *Knutson v. Fredlund*, 56 Wash. 634, 639; it *preserves* an *existing* estate."

As one of the rights which a locator had prior to the Leasing Act was the right to resume work, prior to a relocation, in order to *"preserve an existing estate,"* and as Congress specifically provided in the Leasing Act that a locator of a valid existing claim should have every right that he had prior to the passage of such Act, it follows that a locator of such a claim, after a lapse in assessment work, has the same right to resume such work that he would have had, had the Leasing Act never been passed.

IV

Right of Locator to Maintain His Claim by Resuming Assessment Work Can Not be Taken Away by Implication Nor by Reading Into the Statute Something Which Is Not There.

The petitioner contends that because the Leasing Act prevented any other person from relocating an existing claim after a lapse in the annual assessment work, that the statute thus put the locator in a better position than he was before the passage of the Act, and petitioner therefore contends that this Court should read into the Act some compensating disadvantage in order to offset the advantage which the locator thereby gained. And petitioner thinks that a reasonable compensating disadvantage would be to give the Secretary of the Interior a right to cancel the claim for failure to do assessment work. Petitioner concedes that prior to the passage of the Leasing Act the Secretary had no such power, but contends that it is only reasonable for this Court to read into the statute some disadvantage, which Congress did not see fit to place there, in order to offset the advantage which Congress had given the owner of an existing claim by eliminating the hazard of a relocation. On page 20 of the brief petitioner uses the following language:

> "But the Act does not add to the respondent's burden. The possibility of relocation is taken away, and the possibility of intervention by the Government is substituted in its place. The risk is substantially the same. In either case the locator still has the right to resume work before intervention occurs (*Wilbur v. Krushnic*, 280 U. S. 306), and we submit it makes no real difference to him whether it is the Government or a private individual who may take advantage of his default."

Even if it be true that a claim, existing at the passage of the Leasing Act, is not subject to relocation upon a

failure of assessment work, the argument is not sound. It might have been a legitimate argument, if addressed to Congress when the Act was under consideration by that body. But Congress did not see fit to include in the Act a right to cancel the claim for failure to do assessment work. On the contrary, it particularly provided that existing valid claims might be maintained under the original law. What the purpose of Congress was in not giving the Secretary the additional power, which petitioner thinks he should have been given, is not disclosed by the statute, but in any event, Congress has spoken and this Court can not, by a construction of the statute, read into it something which Congress deliberately omitted.

Where the language of a statute is plain, there is no room for construction. Construction may be only invoked to clear up an ambiguity. In the case of *Van Camp & Sons v. Am. Can. Co.* 278 U. S. 245, the court said on page 253 of the opinion:

> "But the general rule that 'the province of construction lies wholly within the domain of ambiguity,' *Hamilton v. Rathbone*, 175 U. S. 414, 419, 421, is too too firmly established by the numerous decisions of this Court either to require or permit us to do so.

See also *Thompson v. United States* 246 U. S. 547; *Commissioner v. Gottlieb*, 265 U. S. 310; *Corona Co. v. United States* 263 U. S. 537; *United States v. First National Bank* 234 U. S. 245. In the latter case this Court said on page 260 of the opinion:

> "The responsibility for the justice or wisdom of legislation rests with the Congress, and it is the province of the courts to enforce, not to make, the laws. *St. Louis, Iron Mt. & S. Ry. Co. v. Taylor*, 210 U. S. 281, 294; *Texas Cement Co. v. McCord*, 233 U. S. 157, 163."

Moreover, it must be presumed that Congress had in mind the provisions of the then existing mining law. It

particularly referred to such mining laws and preserved to existing claims all their rights under such laws. The question of forfeiture for failure to do annual labor was not a new question for Congress. On March 2, 1907 it enacted an amendment to the mining laws applicable to Alaska. In that amendment it particularly provided that for failure to perform the annual labor *"such claims shall become forfeited."* (Act of March 2, 1907, 34 Stats. (p. 1243.) The mining laws applicable to the rest of the United States contained no such provision, but, on the contrary, provided that a failure to do assessment work should be without effect in the absence of relocation prior to the resumption of such annual work. Had this claim been in Alaska the procedure of the Secretary would have been perfectly proper, but, not being in Alaska, his procedure was unauthorized.

In this case there is no ambiguity which needs interpretation or construction. There is no ambiguity in the term *"valid claims."* There is no ambiguity in the words *"existent at date of the passage of this Act."* But it is claimed that there is an ambiguity in the words *"thereafter maintained in compliance with the laws under which initiated."* The ambiguity is alleged to occur in the word *"maintained."* But the word *"maintained"* is a common, ordinary word, the significance of which is well understood. This Court has passed upon the meaning of the word *"maintained"* in the case of *Wilbur v. Krushnic* 280 U. S. 306, and it there held that a claim was *"maintained"* within the meaning of the Leasing Act by a resumption of work after default therein, as well as by the performance of the work within the limited time. There thus being no ambiguity, the statute is not subject to the construction which petitioner seeks.

It is true, that following the statement that a claim is maintained within the meaning of the Leasing Act by a resumption of work, this Court said:

"Unless at least some form of challenge on behalf of the United States to the *valid existence* of the claim has intervened." (*Wilbur v. Krushnic*, Supra p. 318.)

It is clear that before the passage of the Leasing Act default in assessment work did not invalidate a claim otherwise valid, nor render it non-existent because invalid. On the contrary, the claim was still validly existent after default because resumption of work, as this Court observed in the *Krushnic* case, "*preserves* an *existing* estate." (P. 318.) The Court thus held that such resumption preserves an *existing* estate after the passage of the Act as well as before.

It therefore follows that if a claim had a valid existence when the Act was passed, it occupied the same status thereafter, even though a delinquency in assessment work occurred. The right to preserve the "*existing estate*" remained the same. No words are present in the Leasing Act which demand that this Court should hold, nor does any ambiguity appear in the Act which requires the Court to read into it, that failure to do assessment work renders a claim invalid or non-existent or a "*lost* estate." Otherwise resumption of work could not preserve an *existing* estate. Consequently there could be no basis for a challenge to the valid existence of a claim for such delinquency alone, and such challenge would be unwarranted. It therefore is not embraced within the expression used by this Court in the *Krushnic* case, "*unless at least some form of challenge on behalf of the United States to the valid existence of the claim has intervened.*"

Mandatory Injunction is the Proper Remedy.

That the unwarranted action of the Secretary in rendering a decision that the claims of respondent are null and void, and his declaration that the United States had taken possession of the land for its own uses and purposes, constitute a cloud on respondent's title which it is entitled to

have removed, is well settled by decisions of this Court. As petitioner makes no point to the contrary, it is unnecessary to do more than cite a few of the cases sustaining this proposition.

Payne v. Central Pacific Railway Co., 255 U. S. 228.
Lane v. Watts, 234 U. S. 525, 540.
Noble v. Union River Logging Railroad, 147 U. S. 165.

CONCLUSION

V

It appears in this case that these claims were located in 1917. For 13 years thereafter annual assessment work on each of the six claims, of the value of not less than $100 per year, was performed. This expenditure by respondent amounted to $1,300 on each claim, or $7,800 for the entire group. It is true that in 1931 there was a lapse of some 60 days in the assessment work, and on the 64th day of such lapse the Department filed these proceedings. At the very time the proceedings were filed, arrangements had been made to do the assessment work, and the assessment work would have been done had the proceedings not been filed. The Department was over-eager to file this proceeding, and succeeded in having the contest filed before the work was actually resumed.

For the reason hereinbefore set out in this brief, it is submitted that the action of the Secretary in declaring a forfeiture of these claims was without authority, that such action has clouded the title of petitioner, and that the decree of the lower court, granting a mandatory injunction directing the Secretary to annul his proceedings, should be affirmed.

Respectfully submitted,

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